

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 18-0278 RE
)	
)	
TIANA M. DANIEL)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about April 30, 2019, the Administrative Hearing Commission entered its Decision (“Decision”) in the case of *Missouri Real Estate Commission v. Tiana M. Daniel*, No. 18-0278 RE. In that Decision, the Administrative Hearing Commission found that Respondent Tiana M. Daniel’s Salesperson license (license no. 2010031095) is subject to disciplinary action by the Missouri Real Estate Commission (“Commission”) pursuant to § 339.100.2 (16) and (25), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on October 2, 2019, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent’s license. All of the members of the Commission were present throughout

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

the meeting, except Charles Misko. Further, each member of this Commission has read the Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Ross Keeling. Respondent having received proper notice and opportunity to appear did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Fact, Conclusions of Law, and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate entity in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Decision, and the record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Tiana M. Daniel*, Case No. 18-0278 RE, issued April 30, 2019, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent did not appear in person or through legal counsel at the hearing before the Commission.

4. This Commission licensed Respondent Tiana M. Daniel as a Salesperson, license number 2010031095. Respondent's license was not current at all times relevant to this proceeding. On September 30, 2016, Respondent's license expired.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the Decision issued by the Administrative Hearing Commission dated April 30, 2019, in *Missouri Real Estate Commission v. Tiana M. Daniel*, Case No. 18-0278 RE, takes official notice thereof, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated April 30, 2019, Respondent's Salesperson license, number 2010031095, is subject to disciplinary action by the Commission pursuant to § 339.100.2 (16) and (25), RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.


ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the Salesperson license of Tiana M. Daniel (license no. 2010031095) is hereby **REVOKED**. All evidence of licensure shall be immediately returned to the Commission within 30 days of this Order, if Respondent has not already done so.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 7TH DAY OF OCTOBER, 2019.

MISSOURI REAL ESTATE COMMISSION



Terry W. Moore, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)

Petitioner,)

vs.)

TIANA M. DANIEL,)

Respondents.)

No. 18-0278

DECISION

The Missouri Real Estate Commission (MREC) has cause to discipline Tiana Daniel's real estate salesperson license for falsifying a course completion form.

Procedure

On April 23, 2018, MREC filed its complaint seeking cause to discipline Daniel's license. On November 7, 2018, Daniel was served a copy of the complaint and notice of hearing by personal service. Daniel did not file an answer. On January 8, 2019, we held a hearing. MREC was represented by Assistant Attorney General Ross Keeling. Daniel failed to appear. This matter became ready for our decision on January 31, 2019, when MREC's brief was filed.

Findings of Fact

1. MREC originally issued Daniel a salesperson license on September 30, 2005, which expired on September 30, 2016.

2. On November 10, 2016, MREC received Daniel's renewal application for license/information change.

3. On December 13, 2016, the Missouri Division of Professional Registration, Central Processing Unit, sent a letter to Daniel informing her that her application could not be processed because she had to complete a 24 Hour Missouri Real Estate Practice Course (course) because her license had been non-current since March 13, 2015.¹

4. On January 5, 2017, MREC received from Daniel another renewal application with a falsified certificate for the completion of the required course (certificate of completion).

5. Daniel's certificate of completion stated that she successfully completed the course on December 2, 2016, at The CE Shop, Inc.

6. The certificate of completion was not genuine because it was a continuing education certificate that Daniel altered to falsely represent that she had successfully completed the course when she had not.

7. The certificate of completion indicated it was a "FORM P," but such forms are used strictly for continuing education courses. A genuine course certificate of completion would be on a FORM K.

8. MREC asked The CE Shop, Inc., if Daniel completed the course and was told that Daniel was in the process of taking the course, but had not completed it.

9. On February 3, 2017, the Missouri Division of Professional Registration sent Daniel a letter asking her to submit the correct course certificate of completion.

10. In April 2017, Daniel eventually completed the course and provided MREC a correct certificate of completion.

11. MREC verified with the school that Daniel completed the class in April 2017.

¹ The record does define the difference between an expired and a non-current license.

Conclusions of Law

We have authority to hear MREC's complaint. Sections 621.045² and 339.100.2. MREC has the burden of proving that Daniel committed an act for which the law allows discipline. *Mo. Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

In its complaint, MERC pleads that it has cause to discipline Daniel's license pursuant to § 339.100.2(10), (15), (16) and (25),³ which state:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

- (10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

- (15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;
- (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

- (25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, "material" means important information about which the commission should be informed and which may influence a licensing decision.

We address each of these subdivisions below.

² Statutory references are to RSMo 2016, unless otherwise stated.

³ In its complaint, MREC also pleads § 339.100.2(19) and a violation of 20 CSR 2250-8.170(1). MREC stated in its brief that it has abandoned these claims.

Section 339.100.2(10) – Fraud or Deceit

Section 339.100.2(10) allows MREC to discipline a licensee if the individual obtained his or her license by false or fraudulent representation, fraud or deceit. While Daniel engaged in these acts, her actions did not result in her obtaining a renewal of her license because MREC discovered the altered form before it issued Daniel a renewal license. Accordingly, MREC does not have cause to discipline Daniel pursuant to § 339.100.2(10).

*Section 339.100.2(15) – Violation of
Chapter 339 or any Lawful Regulation*

In its complaint, MREC pleads that Daniel violated 20 CSR 2250-8.170(1)⁴ when she failed to respond within 30 days to MREC's November 21, 2017 communication in which it sent Daniel a proposed settlement agreement. However, MREC presented no evidence regarding its November 21, 2017 correspondence to Daniel. Accordingly, MREC does not have cause to discipline Daniel pursuant to § 339.100.2(15).

*Section 339.100.2(16) – Committing an Act that
is Grounds for the Refusal of a License*

In its complaint, MREC pleads that § 339.040.1 establishes the criteria that must be met to obtain a license, and that Daniel does not meet two of them – “good moral character” and being “competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.” Section 339.040.1(1) and (3).

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Reg'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App. W.D. 1997).

According to § 1.020(9), “Incompetent” refers to “the actual ability of a person to perform in that occupation.” Missouri cases have also defined incompetency, in the professional

⁴ Regulation 20 CSR 2250-8.170(1) provides MREC grounds to discipline a licensee if the individual fails to “respond in writing, within thirty (30) days from the date of the commission’s written request or inquiry[.]”

licensing context, as “a general lack of professional ability, or a lack of disposition to use a present ability to perform a given duty.” *Tendai v. Missouri State Bd. of Reg’n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005), *overruled on other grounds by Albanna v. State Bd. of Reg’n for the Healing Arts*, 293 S.W.3d 423 (Mo. banc 2009). It is a “state of being” showing that a professional is “unable or unwilling to function properly” in the profession. *Albanna*, 293 S.W.3d at 435-436. An evaluation of incompetency necessitates a broader-scale analysis, one taking into account the licensee’s capacities and successes. *Id.* at 436.

In January 2017, Daniel re-submitted a renewal application to MREC after her first application was denied. As part of Daniel’s January 2017 application, she intentionally attached a false certificate of completion knowing that MREC would rely upon it to issue her a renewal license. MREC confirmed with the applicable school that Daniel did not complete the course as she represented in her January 2017 application. Daniel’s actions establish that she lacks good moral character because she was not honest with MREC and did not respect the legal requirements necessary for her to renew her license. However, we cannot find that she was incompetent. MREC has cause to discipline Daniel’s license pursuant to § 339.100.2(16).

*Section 339.100.2(25) – Material Misstatement,
Misrepresentation or Omission*

Daniel intentionally misrepresented that she completed the required course, and the course was material to her obtaining a renewal license. Therefore, MREC has cause to discipline Daniel’s license pursuant to § 339.100.2(25).

Summary

MREC has cause to discipline Daniel’s real estate salesperson license pursuant to § 339.100.2(16) and (25). There is no cause for discipline under § 339.100.2(10) or (15)

SO ORDERED on April 30, 2019.


RENEE T. SLUSHER
Commissioner

FILED

April 23 2018

ADMINISTRATIVE HEARING
COMMISSION

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

MISSOURI REAL ESTATE COMMISSION)
3605 Missouri Boulevard)
P.O. Box 1339)
Jefferson City, MO 65102,)

Petitioner,)

v.)

Tiana M. Daniel)
9515 Courtney Avenue)
Kansas City, MO 64138)
Telephone: (816) 728-5930)

Respondent.)

Case #: _____

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the Attorney General of the State of Missouri, and for its cause of action against Respondents, states the following:

1. The MREC is an agency of the State of Missouri, created and established pursuant to Section 339.120, RSMo,¹ for the purpose of executing and enforcing the provisions of Chapter 339, RSMo, Real Estate Agents, Brokers, Appraisers, and Escrow Agents.

¹ All statutory citations are to the 2016 Revised Statutes of Missouri, as amended, unless otherwise noted.

2. Respondent, Tiana M. Daniel ("Daniel"), holds a license as a real estate Inactive Salesperson, license no. 2010031095. The Petitioner issued Daniel's Salesperson license on August 24, 2010 and the license expired on September 30, 2016. Daniel's license had become non-current on March 13, 2015, when her affiliation with her former brokerage had terminated.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045, and 339.100, RSMo.

4. On November 10, 2016, the MREC received Daniel's application for license/information change, requesting that her license be transferred to another brokerage from her previous brokerage, which was rejected because her real estate salesperson's license was expired, and had to be renewed in order to become active.

5. On December 13, 2016, the Missouri Division of Professional Registration, Central Processing Unit, sent a letter to Daniel informing her that her application could not be processed because she had to complete a 24 hour Missouri Real Estate Practice Course since her license had been non-current since March 13, 2015.

6. On January 5, 2017, the MREC received Daniel's 2016-2018 license renewal application requesting that her license be renewed with a falsified certificate showing her completion of the 24 hour Missouri Real

Estate Practice Course attached. The certificate Daniel submitted was a continuing education certificate that she had altered to falsely indicate she had passed the Real Estate Practice Course.

7. On November 21, 2017, the MREC sent Daniel a letter with a proposed settlement agreement in an attempt to resolve this matter, requiring Daniel's response on or before January 22, 2018. Daniel has not responded to that letter, or entered into a settlement agreement with the MREC.

8. Section 339.100.2, RSMo, setting forth the grounds for discipline, provides in relevant part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

...

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, "**material**" means important information about which the commission should be informed and which may influence a licensing decision;

9. Daniel's conduct set forth in paragraphs 6 and 7 above shows that Daniel obtained a false certificate of authority for passing the Missouri Real Estate Practice Course, and attempted to obtain the renewal of her real estate salesperson's license by false or fraudulent representation, fraud or deceit, providing cause for discipline under § 339.100.2(10), RSMo.

10. Daniel's conduct set forth in paragraphs 6 and 7 above shows that Daniel failed to respond within 30 days to an MREC communication sent to her on November 21, 2017. Thus, cause exists to discipline Daniel's licenses pursuant to § 339.100.2(15), RSMo, because Daniel has failed to respond in writing to the MREC's written requests or inquiries, in violation of 20 CSR 2250-8.170(1), which provides in relevant part:

Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

11. Section 339.040, RSMo, establishes the criteria that must be established to hold a real estate license and states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, . . . whose officers, . . . present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

. . .

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

12. Daniel's failure to respond to MREC communications, as set forth above, and her falsification of a certificate with regard to her application for renewal of her real estate license, is evidence that Daniel is not a person of good moral character, and that she is not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public. Therefore, there would be grounds under § 339.040.1, RSMo, for the MREC to deny a license to Daniel, and thus provides cause for discipline under § 339.100.2(16), RSMo.

13. Daniel's conduct, as alleged in this Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith, incompetence, misconduct, and/or gross negligence, providing cause for discipline under § 339.100.2(19), RSMo.

14. Daniel's alteration of documents for the purpose of falsely showing her completion of the Missouri Real Estate Practice Course is a material misstatement, misrepresentation, or omission with regard to an application for license renewal, providing cause for discipline under § 339.100.2(25), RSMo.

WHEREFORE, Petitioner prays this Administrative Hearing Commission to conduct a hearing in this case pursuant to sections 621.015 to 621.205, RSMo, and thereafter issue its findings of fact and conclusions of

law that the Petitioner may discipline Respondent Tiana M. Daniel's real estate salesperson's license under Chapter 339, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

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